

RESOLUTION NO. 15-278

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "UTILITY AGREEMENT" BETWEEN THE CITY AND KEY WEST RESORT UTILITIES CORP. (KWRU) AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT TO CONNECT THE NEW TRANSPORTATION FACILITY TO THE KWRU SEWER SYSTEM; AUTHORIZING THE PAYMENT OF ASSOCIATED FEES IN THE AMOUNT OF \$100,570.98; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, sanitary sewer service to the new Transit Facility on Stock Island will be provided by Key West Resort Utilities Corp.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached "Utility Agreement" with Key West Resort Utilities Corp. is approved and the City Manager is authorized to execute the document.

Section 2: That fees in the amount of \$100,570.98 are authorized to be paid from excess funds available from the Florida Department of Transportation grant for this project (TS 0402).

Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

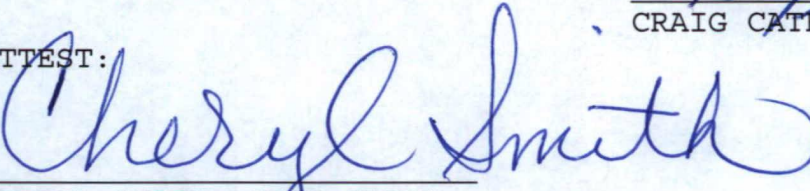
Passed and adopted by the City Commission at a meeting held this 15 day of September, 2015.

Authenticated by the presiding officer and Clerk of the Commission on September 16, 2015.

Filed with the Clerk September 16, 2015.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>Absent</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>Yes</u>

ATTEST:


CHERYL SMITH, CITY CLERK


CRAIG CATES, MAYOR

EXECUTIVE SUMMARY



To: Jim Scholl, City Manager

From: Norman Whitaker, Director / KWDoT

VIA: Sarah Spurlock, Assistant City Manager
Greg Veliz, Assistant City Manager

Date: Revised September 3, 2015

Subject: New Transit Facility: Service Agreement with Key West Resort Utilities Including Issuance of Purchase Orders for Associated Fees.

Action Statement:

Approve agreement with Key West Resort Utilities and issuance of purchase orders for associated fees to provide sanitary sewer service to the new facility. Authorize the City Manager to negotiate and execute the agreement with KWRU.

Background:

The design-build contract to construct a New Transit Facility on the closed Stock Island Landfill site was awarded to D.N. Higgins, Inc. (Higgins) under Resolution 13-080. The Notice to Proceed was subsequently issued on May 17, 2013.

Key West Resort Utilities

Sanitary service to the new Transit Facility will be provided by Key West Resort Utilities Corp. (KWRU) in accordance with the attached ***Draft Utility Agreement***. Fees associated with providing required service and the agreement include:

Administrative and Engineering Fee:	\$ 3,125.00
Capacity Reservation Fee (not to exceed estimate):	\$76,680.00
Pro-rata share of North Stock Island Force Main Construction:	\$17,765.98
On-Site Inspection of Service Main Installation:	<u>\$ 3,000.00</u> (estimated)

Total Not-to Exceed KWRU Agreement Fees: \$100,570.98

The City and KWRU are negotiating the Capacity Reservation Fee. This fee will not exceed the original estimate of \$76,680.00.

Purpose & Justification:

Executing the agreement with KWRU and issuance of purchase orders for associated fees will provide sanitary sewer service to the new facility.

This resolution and construction of the new Key West Public Transportation facility supports the Key West Strategic Plan Infrastructure Goal #1, *A transportation system which is aesthetically attractive, functional, efficient, safe and environmentally sensitive.*

Financial Impact:

Fees will be paid directly from the City to KWRU via new purchase orders (P.O). Costs associated with this resolution (not-to-exceed \$100,570.98) will be funded by existing excess funds available from the Florida Department of Transportation (FDOT) grant for this project (Project Number TS 0402).

Recommendation:

The Key West Transit Director and Engineering Services staff recommends approval of executing the agreement with Key West Resort Utilities including issuing purchase orders for associated fees to provide sanitary sewer service to the new facility. This resolution will authorize the City Manager to negotiate and execute the agreement with KWRU.

RESOLUTION NO. 13-080

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE AWARD OF BID TO D.N. HIGGINS FOR THE DESIGN-BUILD OF THE PUBLIC TRANSIT FACILITY AND THE DEMOLITION AND CLOSURE OF THE SOLID WASTE TO ENERGY SITE IN AN AMOUNT NOT TO EXCEED \$8,536,327.00; AUTHORIZING NECESSARY BUDGET TRANSFERS AND AMENDMENTS; AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT IN ACCORDANCE WITH THE BID DOCUMENTS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Request for Proposal (RFP) 001-13 was issued in September, 2012, and three proposals were received on December 12, 2012; and

WHEREAS, the City's technical evaluation board, consisting of City staff and community experts, considered the proposals and heard presentations and public comments at two public meetings;

WHEREAS, at a public meeting on January 17, the technical ranking and the proposed costs were combined, with D.N. Higgins receiving the highest combined ranking; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached proposal of D.N. Higgins, contingent upon a deductive change order, in an amount not to exceed \$8,536,327.00 for demolition and closure of the Solid Waste to Energy facility, and design-build of the public transit facility

is hereby approved in accordance with the terms and conditions contained in Request for Proposal #001-13 and response thereto.

Section 2: That the City Manager, upon the advice and consent of the City Attorney, is hereby authorized to enter into a contract in accordance with the proposal documents.

Section 3: That necessary budget transfers and amendments are hereby authorized to effect this project.

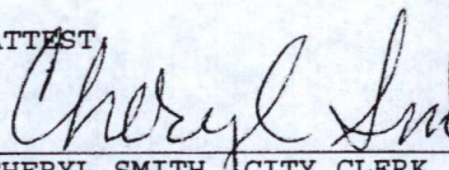
Section 4: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 19th day of March, 2013.

Authenticated by the presiding officer and Clerk of the Commission on March 20, 2013.

Filed with the Clerk March 20, 2013.

ATTEST


CHERYL SMITH, CITY CLERK



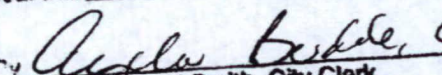


Craig CATES, MAYOR

STATE OF FLORIDA, COUNTY OF MONROE,
CITY OF KEY WEST

This copy is a true copy of the public record on file in this office. Witness my hand and official seal this 27 day of MARCH, 2013

Page 2 of 2



Cheryl Smith, City Clerk



KW Resort Utilities Corp.

6630 Front Street
Key West, FL 33040
305.295.3301
FAX 305.295.0143
www.kwru.com

Howell
5/14/15
6/16/15
E. Miller

May 12, 2015

James Bouquet P.E.
City of Key West
Engineering Department
3132 Flagler Ave.
Key West, FL 33040

RE: 5701 College Rd. (REF: 0072080 - 00500) connecting to KW Resort Utilities sewer system

Dear Mr. Bouquet:

Utility staff has been working through the agents in an effort to move the City's Transportation Facility project forward. Many inputs were provided by the agents and the package that is enclosed was put together using the information provided. This correspondence is a condensed roadmap to connection followed by explanatory notes and the related documents. At this juncture the project is at DEP Permit Application signature stage. Given this, the Utility requires the following items in order to connect the referenced property to sewer.

At DEP Permit Application signing the following must be completed

(1) Executed UTILITY AGREEMENT

- Administrative Review and Engineering Fee Paid (per the UTILITY AGREEMENT - \$3,125)
- 1/3 Capacity Reservation Fee Paid (per the UTILITY AGREEMENT - \$25,560)

(2) Pro-rata share of the total cost of construction of the North Stock Island Force Main (\$17,765.98).

Prior to final connection to KWRU sewer the following must be completed

- 2/3 Capacity Reservation Fee Paid (per the UTILITY AGREEMENT - \$51,120)
- Payment for KWRU on-site inspection (per the UTILITY AGREEMENT - \$100 per hour of inspection time this may vary from project to project)
- Wastewater Service Application and requisite utility security deposit

Explanatory notes follow.

The UTILITY AGREEMENT is attached and once executed will become public record with the State of Florida Public Service Commission. In Section 5 of the AGREEMENT the Rates, Fees, and Charges are addressed. These include Capacity Reservation Fees, Administrative Review and

Engineering costs, Inspection Fees, etc. The City will owe KWRU upon signing the UTILITY AGREEMENT one third of Capacity Reservation Fee of \$25,560 and an Administrative Fee of \$3,125.00 based on the affidavit provided by the City's contractor. The City is also agreeing to pay the remaining two thirds of the Capacity Reservation Fee in the amount of \$51,120 prior to sending wastewater to KWRU. The City is agreeing that KWRU will inspect the sewer infrastructure and witness testing and these field services shall be invoiced to the City at \$100 per hour for the field services provided.

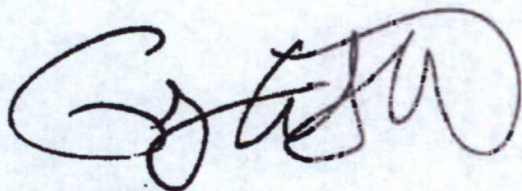
Pro-rata share of the total cost of construction North Stock Island Force Main. The property located at 5701 College Rd. is to be connecting to the KWRU sewer system via the North Stock Island Force Main. This force main was installed by FKCC, School Board of Monroe County, LKMC (hospital), and The Skilled Nursing facility. The Utility is required to collect a pro-rata share, of the total cost of the utility line, from any additional future users, and return the proceeds in kind to FKCC, LKMC, MC School Board, and the Skilled Nursing facility.

The cost of the sewer line was \$230,338.42 and based on the estimated flow generated by your facility your portion of the line is \$17,765.98. The full amount of \$17,765.98 will be returned to the four entities listed above. See attached City of Key West Transportation Facility pro-rata share calculation sheet.

Once the sewer infrastructure is functional but prior to the City sending sewerage to the Utility, the City is also required to fill out a Wastewater Service Application and pay a deposit as is required, by the State of Florida Public Service Commission for all KWRU customers. This is required to set up the sewer account, billing address, authorized contact, etc. The sewer account will require the City pay for service and KWRU will send a monthly sewer utility bill to the address and agent as directed on the Wastewater Service Application.

Please do not hesitate to contact me should you require additional assistance with the sewer connection process for the city's Transportation Facility.

Sincerely,



Greg Wright
Vice President

UTILITY AGREEMENT

THIS UTILITY AGREEMENT (Agreement), dated as of the 12 day of May, 2015, by and between KW Resort Utilities Corp., a Florida corporation, having its office at 6630 Front Street, Key West, Florida 33040, (Service Company), and The City of Key West, having its office(s) located at 3132 Flagler Ave., Key West, Florida 33040 (Developer).

RECITALS

- A. Developer is the owner of certain real property more particularly described on Exhibit A, attached hereto and made a part hereof (the Property).
- B. Service Company owns, operates, manages and controls a Central Sewage System and is willing to provide sanitary sewer services pursuant to this Agreement.
- C. Developer requests that Service Company provide central wastewater service to the Property as indicated on the plans prepared by Weiler Engineering for The South Stock Island sewer expansion, (Copy of plan sheet included as an exhibit).

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00), and the mutual covenants and agreements hereinafter set forth, and intending to be legally bound thereby, it is agreed as follows:

1. Definitions

Business Day shall mean any day of the year in which commercial banks are not required or authorized to close in New York, New York.

Capacity Reservation Fee as such term is defined in Section 6 hereof.

Central Sewage System shall mean the central collection, transmission, treatment and disposal system and appurtenant facilities owned and operated by the Service Company.

Connection as such term is defined in Section 6 hereof.

Equivalent Residential Connections (ERC), shall be defined as one individual residential connection or, for commercial and other uses, the estimated flow based on the use and Chapter 64E-6, F.A.C., divided by the most recently approved Capacity Analysis rate per residential connection (currently 250 gallons per day per residential connection) also known as E.D.U.

Plans and Specifications as such term is defined in Section hereof.

Point of Delivery shall mean the point where the pipes connect at the property line between the public right of way and private property. The Service Company shall own the clean out to the valve pit and the remaining vacuum lines down stream. The customer shall own the pipes connecting thereto.

Property as such term is defined in the Recitals hereof.

Property Installations or System shall mean any service lines located on individual lots or parcels of the Property or to buildings located on the Property that connect to the Central-Sewage System, and may include facilities located outside the Property, required to be installed by Developer, to connect facilities on the Property to the Central Sewage System.

Service Company's Affiliates shall mean any disclosed or undisclosed officer, director, employee, trustee shareholder, partner, principal, parent, subsidiary or other affiliate of Service Company.

Tariff shall mean Service Company's existing and future schedules of rates and charges for sewer service.

2. New System Construction

- (a) Prior to the construction and installation of the System, Developer shall, at its sole cost and expense, cause to be prepared and provide to Service Company plans and specifications of the system (Plans and Specifications), prepared by a Florida registered professional engineer, and in accordance with all policies and practices of Service Company and all applicable laws and regulations and standards adopted by the Department of Environmental Protection and Monroe County.
- (b) Service Company shall approve or disapprove of the Plans and Specifications within thirty (30) days of receipt thereof by written notice to Developer.
- (c) Upon Developer's receipt of Service Company's written notice of disapproval of the Plans and Specifications, Developer shall promptly revise the Plans and Specifications in accordance with any requirements set forth by Service Company in its written notice of disapproval, and re-submit such revised Plan and Specifications to Service Company for approval or disapproval. Service Company shall approve or disapprove of any revised Plans and Specifications within five (5) business days of receipt thereof by written notice to Developer.
- (d) Upon Developer's receipt of Service Company's written notice of approval of the Plans and Specifications, Developer may proceed with the construction and installation of the System. Developer shall notify Service Company seventy-two (72) hours prior to beginning construction. Construction and Installation shall be completed within six (6) months of Service Company's written notice of approval of the Plans and Specifications. All work shall be inspected by licensed and insured contractors and engineers reasonably acceptable to Service Company. In accordance with Chapter 62-604 F.A.C., Developer shall provide, at its sole cost, a Professional Engineer registered in Florida to provide on-site observation during construction and testing and to certify that the System is constructed in compliance with the approved Plans and Specifications. All materials employed by Developer for the System shall be reasonably acceptable to Service Company.

No portion or element of the System shall be covered or concealed until inspected by Service Company. Developer shall notify Service Company of Developer's readiness for inspection of the System, and Service Company shall inspect the System within two (2) business days after each such notice. Any portion of the System not inspected by Service Company within said time period, shall be deemed to have been accepted by Service Company. In the event that Service Company determines through any such inspection that any portion of the System does not fully comply with the Plans and specific conditions or applicable laws and regulations, Service Company shall notify Developer in writing of such non-compliance not more than two (2) business days after any such inspection and Developer shall immediately modify the System to insure that the System fully complies with the Plans and specifications and applicable laws and regulations.

- (e) In the event Service Company discovers that any portion of element of the System has been installed, covered or concealed without the prior approval of Service Company, Developer shall, upon written demand by Service Company, immediately dismantle or excavate such portion of the System at its sole cost and expense.

3. System Records

Prior to Service Company's acceptance of all or any portion of the System for service, operation and maintenance or for service only, Developer shall deliver the following records and documents to Service Company:

- (a) Copies of all invoices and/or contracts for the construction and installation.
- (b) An affidavit signed by the developer stating that there are no parts or portions of the System which are not included in the invoices and contracts noted in subsection (a) above, that said invoices and contracts accurately and fully reflect the total cost of the System and that the System is free and clear of all liens and encumbrances.

- (c) Lien waivers from all contractors, subcontractors, material people, and any other parties that provided labor, services or materials in connection with the construction of the System.
- (d) A reproducible Mylar and two (2) sets of blue line copies, accurately depicting all of the System as constructed and installed, and signed and sealed by the engineer and surveyor of record for the System.
- (e) Copies of the results of all tests conducted on the System.
- (f) Any other records or documents required by applicable law or required under the Tariff.
- (g) A certificate of completion of the System signed and sealed by the engineer of record.
- (h) A copy of the Department of Environmental Protection permit to construct the System and all inspection reports and approvals issued by the Engineer and the Department of Environmental Protection and any other applicable governmental authority or agency.
- (i) A bill of sale, in recording form, conveying all right, title and interest in and to the System, to Service Company free of any and all liens and encumbrances for that portion of the System located on the Service Company side of the Point of Delivery.

4. **Property Rights**

In those cases in which Service Company accepts all or any portion of the System for service, operation and maintenance, Developer shall convey the following property rights and interests for that portion of the System to Service Company:

- (a) A non-exclusive easement, in the form attached as Exhibit "B", for that portion of the Property of sufficient size to enable Service Company ingress and egress to operate, maintain and replace such portions of the System not located within public rights-of-way. The foregoing easement shall be in effect for a period of time not less than the period during which the Service Company shall use the System to provide service to Customers.
- (b) A non-exclusive easement, in the form attached as Exhibit "B", of sufficient size to enable ingress, egress and access by Service company personnel or vehicles to any lift or pump station located on the Property. The foregoing easement shall be in effect for a period of time not less than the period during which the Service Company shall use the System to provide service to Customers.
- (c) Notwithstanding the foregoing easements, Developer retains all rights and privileges to utilize the property in any manner it deems appropriate provided such use is not inconsistent with the purposes intended for such easements.

5. **Rates, Fees, Charges**

- (a) All Customers will pay the applicable fees, rates and charges as set forth in the Tariff. Nothing contained in this Agreement shall serve to prohibit Service Company's right to bill or collect its rates and charges from Customers, nor to require compliance with any provision of its Tariff.
- (b) Developer shall pay to Service Company a reservation fee (Capacity Reservation Fee), in the amount of Two Thousand Seven Hundred (\$2,700.00) dollars per E.R.C. connection to be reserved by Developer to serve the residential or commercial structures to be constructed in or upon the Property (individually, a Connection, collectively, the Connections). ERC's assigned to the property must remain with the property and, as such, are non-transferrable to other property. Prior to execution of this agreement, Developer has previously supplied Service Company access and information necessary to determine number of ERC's proposed. From this information it has been determined per Exhibit C: Total 28.4 ERC's

- (c) Developer shall pay 1/3 (\$25,560.00) of the Capacity Reservation Fee and does not owe additional funds for the Capacity Reservation Fee upon execution of the Agreement, but will however be responsible for the remaining 2/3 (\$51,120.00) upon connection of the first building pursuant to the payment option of Developer's choosing as articulated in Section 7 of this Agreement.

Service Company shall have the right to cancel such reservation in the event of Developer's failure to comply with the terms of this Agreement. In the event there is additional water usage over and above the amount reserved in paragraph 6(b) above, (based on an annual review) the Developer shall remit additional Capacity Reservation Fees to Service Company thirty (30) days after notice by Service Company of additional fees due.

- (d) Developer shall pay (\$7,250.00) to Service Company, for engineering review and administrative costs related to processing construction plans and documents submitted by Developer pursuant to this Agreement. Developer shall also pay Service Company \$100.00 per hour for periodic inspections to be made by Service Company or its agents within thirty (30) days of submission by Service Company to Developer of invoices confirming time spent conducting such inspection services.

- (e) In the event of default by Developer and the payment of fees hereunder, Service Company may cancel this Agreement by giving thirty (30) days written notice of default and retain all payments hereunder as liquidated damages.

- (f) Developer agrees that in the event of a change of use or any change that might affect the flows (i.e. addition of a restaurant) Service Company will be notified and the applicable Capacity Reservation Fees will be paid prior to discharge to the Central Sewage System.

6. **Payment Options**

In the event the Property Owner is connecting to the vacuum collection system, the Property Owner shall have the following options to connect. In the event the Property Owner is connecting to the gravity collection system, the Property Owner must pay the Utility the entire cost as provided in option (a) below:

- (a) The Property Owner must pay the Utility the entire cost of the Capacity Reservation Fee (\$76,680.00) as provided for in Paragraph 5(c) above; or
- (b) ~~The Property Owner must pay five (5) percent of the Capacity Reservation Fee, (said fee payable to Monroe County) and execute a Consent and Acknowledgment Agreement delivering both to Utility upon execution of the Utility Agreement, or form provided by Utility and deliver both to Utility.~~

7. **Absolute Conveyance**

Developer understands, agrees and acknowledges that Developer's conveyance of any and all easements, real property or personal property (including, without limitation, the System), or payment of any funds hereunder (including, without limitation, the Capacity Reservation Fee and Connection Charge), shall upon acceptance by Service Company, be absolute, complete and unqualified, and neither Developer nor any party claiming by or through Developer shall have any right to such easements, real or personal property, or funds, or any benefit which Service Company may derive from such conveyance or payments in any form or manner.

8. **Delivery of Service; Operation and Maintenance**

- (a) Upon Developer's full performance of its obligations under this Agreement, Service Company shall provide service to the Point of Delivery in accordance with the terms of this Agreement, all applicable laws and regulations and shall operate and maintain the Central Sewage System to the Point of Delivery in accordance with the terms and provisions of this Agreement. Said service shall be provided on or about September 1, 2015.

- (b) Developer shall, at its sole cost and expense, own, operate and maintain any part of the System that has not been conveyed to Service Company pursuant to the terms and conditions of this Agreement.
- (c) Developer acknowledges that certain water quality standards must be met prior to influent entering the wastewater treatment plant (primarily chloride levels and excessive flows) and agrees to allow Service Company to monitor flows and water quality at Service Company's discretion at a point on the Developer's side of the Point of Delivery. If it is determined that substandard influent or excessive flows are entering the Central Sewage System via Developer's System, Developer agrees to isolate the source and to repair or replace the portion or portions of the faulty System in a manner acceptable to Service Company in accordance with this Agreement.
- (d) In the event any portion of the Property is developed as a condominium, the condominium association shall be required to execute a maintenance agreement with respect to any portion of the System not conveyed to Service Company. Such maintenance agreement shall provide that if the condominium association fails to adequately maintain and repair the System, Service Company shall have the right to maintain and repair such System at the sole cost and expense of the condominium association.

9. **Repair of System**

In the event of any damage to or destruction of any portion of the Central Sewage System due to any acts or omissions by Developer, any Customer or their respective agents, representatives, employees, invitees or licensees, Service Company shall repair or replace such damaged or destroyed facilities at the sole cost and expense of responsible party. Developer shall operate, maintain and repair all other portions of the System not conveyed to Service Company at its sole cost and expense.

10. **Term**

This Agreement shall become effective as of the date first written above, and shall continue for so long as Service Company provides sewer service to the public.

11. **Default**

In the event of a default by either party of its duties and obligations hereunder, the non-defaulting party shall provide written notice to the defaulting party specifying the nature of the default and the defaulting party shall have five (5) days to cure any default of a monetary nature and thirty (30) days for any other default. If the default has not been cured within the applicable period (time being of the essence), the non-defaulting party shall be entitled to exercise all remedies available at law or in equity, including but not limited to, the right to damages, injunctive relief and specific performance. Service Company may, at its sole option, discontinue and suspend the delivery of service to the system in accordance with all requirements of applicable law and the Tariff if Developer fails to timely pay all fees, rates and charges pursuant to the terms of this Agreement.

12. **Excuse from Performance**

(a) **Force Majeure.**

If Service Company is prevented from or delayed in performing any act required to be performed by Service Company hereunder, and such prevention or delay is caused by strikes, labor disputes, inability to obtain labor, materials or equipment, storms, earthquakes, electric power failures, land subsidence, acts of God, acts of public enemy, wars, blockades, riots, acts of armed forces, delays by carriers, inability to obtain rights-of-way, acts of public authority, regulatory agencies, or courts, or any other cause, whether the same kind is enumerated herein, not within the control of Service Company (Force Majeure), the performance of such act shall be excused for a period equal to the period of prevention or delay.

(b) Governmental Acts.

If for any reason during the term of this Agreement, other than the fault of Developer, any federal, state or local authorities or agencies fail to issue necessary permits, grant necessary approval or require any change in the operation of the Central Sewage System or the System (Governmental Acts), then, to the extent that such Governmental Acts shall affect the ability of any party to perform any of the terms of this Agreement in whole or in part, the affected party shall be excused from the performance thereof and a new agreement shall be negotiated, if possible, by the parties hereto in conformity with such permits, approval or requirements. Notwithstanding the foregoing, neither Developer nor Service Company shall be obligated to accept any new agreement if it substantially adds to its burdens and obligations hereunder.

(c) Emergency Situations.

Service Company shall not be held liable for damages to Developer and Developer hereby agrees not to hold Service Company liable for damages for failure to deliver service to the Property upon the occurrence of any of the following events:

1. A lack of service due to loss of flow or process or distribution failure; provided that Service Company has utilized its best efforts to maintain the Central Sewage System in good operating condition.
2. Equipment or material failure in the Central Sewage System or the System, including storage, pumping and piping provided the Service Company has utilized its best efforts to maintain the Central Sewage System in good operating condition; and

3. Force Majeure, unforeseeable failure or breakdown of pumping, transmission or other facilities, any and all governmental requirements, acts or action of any government, public or governmental authority, commission or board, agency, agent, official or officer, the enactment of any statute, ordinance, resolution, regulation, rule or ruling, order, decree or judgment, restraining order or injunction of any court, including, without limitation, Governmental Acts.

- (d) Notwithstanding any excuse of performance due to the occurrence of any of the foregoing events, Developer shall not be excused from payment of any fees, charges and rates due to Service Company under the terms of this Agreement, including without limitation, the Capacity Reservation Fee and Connection Charge.

13. **Successors and Assigns**

This Agreement and the easement granted hereby, shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14. **Indemnification**

Service Company and Developer agree:

- (1) to indemnify and hold the other harmless from negligent acts or omissions of itself, its officers, agents, invitees and users of the system, and
- (2) to indemnify and hold the other harmless from third-party suits against a party which result from the breach of the Agreement by the other party.

15. **Assignment of Warranties and Bonds**

Developer shall assign any and all warranties, maintenance, completion and performance bonds and the right to enforce same to the Service Company which Developer obtains from any contractor constructing the System. Developer shall obtain a written warranty, completion, performance and maintenance bonds from its contractor for a minimum period of twenty-four (24) months. If Developer does not obtain such written warranty and performance and maintenance bonds from its contractor and deliver same to Service Company, then in such event, Developer

agrees to warrant the construction of the System for a period of twenty-four (24) months from the date of acceptance by the Service Company.

16. Notices

All notices, demands, requests or other communications by either party under this Agreement shall be in writing and sent by (a) first class U.S. certified or registered mail, return receipt requested, with postage prepaid, or (b) overnight delivery service or courier, or (c) tele-facsimile or similar facsimile transmission with receipt confirmed as follows:

If to Service Company: Mr. Christopher Johnson, President
6630 Front Street
Key West, FL 33040
Facsimile (305) 295-0143

With a Copy To: Mr. Jeff Weiler, P.E.
Weiler Engineering
20000 Veterans Boulevard
P.O. Box 100, Key West, FL 33954
Facsimile (305) 764-8015

If to Developer: Jim Bouquet
City of Key West
3132 Flagler Ave
Key West, FL 33040

17. Tariff

This agreement shall be filed by Service Company with the Florida Public Service Commission within twenty (20) days after this Agreement is signed by both parties. This Agreement is subject to all of the terms and provisions of the Tariff. In the event of any conflict between the Tariff and the terms of this Agreement, the Agreement shall govern and control.

18. Miscellaneous Provisions

- a) This Agreement shall not be altered, amended, changed, waived, terminated or otherwise modified in any respect or particular, and no consent or approval required pursuant to this Agreement shall be effective, unless the same shall be in writing and signed by or on behalf of the party to be charged.
- (b) All prior statements, understandings, representations and agreements between the parties, oral or written, are superseded by and merged in this Agreement, which alone fully and completely expresses the agreement between them in connection with this transaction and which is entered into after full investigation by neither party relying upon any statement, understanding, representation or agreement made by the other not embodied in this Agreement. This Agreement shall be given a fair and reasonable construction in accordance with the intention of the parties hereto, and without regard to or aid of canons requiring construction against Service Company or the party drafting this Agreement.
- (c) No failure or delay of either party in the exercise of any right or remedy given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right or remedy has expired) shall constitute a waiver of any other or further right or remedy nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or any other right or remedy. No waiver by either party of any breach hereunder or failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other or subsequent breach, failure or refusal to so comply.
- (d) This Agreement may be executed in one or more counterparts, each of which so executed and delivered shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. It shall not be necessary for the same counterpart of this Agreement to be executed by all of the parties hereto.

- (e) Each of the exhibits and schedules referred to herein and attached hereto is incorporated herein by this reference.
- (f) The caption headings in this Agreement are for convenience only and are not intended to be a part of this Agreement and shall not be construed to modify, explain or alter any of the terms, covenants or conditions herein contained.
- (g) This Agreement shall be interpreted and enforced in accordance with the laws of the state in which the Property is located without reference to principles of conflicts of laws. In the event that the Florida Public Service Commission loses or relinquishes its authority to regulate Service Company, then all references to such regulatory authority will relate to the agency of government or political subdivision imposing said regulations. If no such regulation exists, then this Agreement shall be governed by applicable principles of law.
- (h) Each of the parties to this Agreement agrees that at any time after the execution hereof, it will, on request of the other party, execute and deliver such other documents and further assurances as may reasonably be required by such other party in order to carry out the intent of this Agreement.
- (i) If any provision of this Agreement shall be unenforceable or invalid, the same shall not affect the remaining provisions of this Agreement and to this end the provisions of this Agreement are intended to be and shall be severed. Notwithstanding the foregoing sentence, if (i) any provision of this Agreement is finally determined by a court of competent jurisdiction to be unenforceable or invalid in whole or in part, (ii) the opportunity for all appeals of such determination have expired, and (iii) such enforceability or invalidity alters the substance of this Agreement (taken as a whole) so as to deny either party, in a material way, the realization of the intended benefit of its bargain,

such party may terminate this Agreement within thirty (30) days after the final determination by notice to the other. If such party so elects to terminate this Agreement, then this Agreement shall be terminated and neither party shall have any further rights, obligations or liabilities hereunder, except for any rights, obligations or liabilities which by this specific terms of this Agreement survive the termination of this Agreement.

- (j) In the event of any litigation arising out of or connected in any manner with this Agreement, the non-prevailing party shall pay the costs of the prevailing party, including its reasonable counsel and paralegal fees incurred in connection therewith through and including all other legal expenses and the costs of any appeals and appellate costs relating thereto. Wherever in this Agreement it is stated that one party shall be responsible for the attorneys fees and expenses of another party, the same shall automatically be deemed to include the fees and expenses in connection with all appeals and appellate proceedings relating or incidental thereto. This subsection (j) shall survive the termination of this Agreement.
- (k) This Agreement shall not be deemed to confer in favor of any third parties any rights whatsoever as third-party beneficiaries, the parties hereto intending by the provisions hereof to confer no such benefits or status.
- (l) Developer agrees that the Service Company may, at its sole discretion, require certain allocations to the proposed collection and transmission systems for future connections. Developer further agrees that Service Company may, at its sole discretion, extend the sewer line for any reason. It is understood that there will be no reimbursement or additional credit.

IN WITNESS WHEREOF, Service Company and Developer have executed this Agreement as of the day and year first above written.

SERVICE COMPANY:

KW Resort Utilities Corp.

By: _____

Print Name: Gregory Wright

Title: Vice President

Address: 6630 Front Street
Key West, FL 33040

DEVELOPER:

City of Key West

By: _____

Print Name: _____

Title: _____

Address: 3132 Flagler Ave.
Key West, FL 33040

STATE OF FLORIDA)

COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, as _____, a Florida corporation, on behalf of said corporation. He/she is personally known to me or who has produced _____ as identification.

My Commission Expires:

STATE OF FLORIDA)

COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, as _____, a Florida corporation, on behalf of said corporation. He/she is personally known to me or who has produced _____ as identification.

My Commission Expires:



KW Resort Utilities, Corp.

6630 Front Street
Key West, FL 33040
305.295.3301
FAX 305.295.0143
www.kwru.com

Exhibit C - ERC Calculation Sheet

Project Name City of Key West Transportation Facility

Property Address 5701 College Rd.

RE # (s) 0072080-000000

Calculation used: ☒ DEP Permit or ☐ F.A.C. Chapter 64E-6

Average GPD used to determine ERCs taken from FL DEP. Collection System Permit application submitted by John Creswell, PE who is the contracted engineer for the City of Key West

Average GPD per DEP permit = 7100 gpd

$$7100 / 250 = 28.4 \text{ gpd}$$

1 ERC = 250 gpd

Total ERC's =
Date Calculated

Signature

28.4
4/24/2015
GW